

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

APRIL COULOUTE, :
Plaintiff, :
 :
-vs- : Civil No. 3:01cv1823 (PCD)
 :
MERCURY MORTGAGE INC., *et al.*, :
Defendants. :

ORDER DISMISSING COMPLAINT

Plaintiff was granted leave to proceed in forma pauperis. Construing plaintiff's complaint under the liberal standard afforded pro se submissions, *see Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), no cognizable claim against defendants can be identified and the amended complaint is dismissed sua sponte.

"A district court must dismiss an in forma pauperis action if the action is 'frivolous or malicious.' *See* 28 U.S.C. § 1915(e)(2)(B)(I). An action is 'frivolous' when either: (1) the factual contentions are clearly baseless, such as when allegations are the product of delusion or fantasy; or (2) the claim is 'based on an indisputably meritless legal theory. . . . A claim is based on an 'indisputably meritless legal theory' when either the claim lacks an arguable basis in law . . . or a dispositive defense clearly exists on the face of the complaint." *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998) (citations omitted; internal quotation marks omitted).

Plaintiff's original complaint was dismissed on two grounds: (1) failure to allege action under color of state law or state action necessary for an alleged violation of 42 U.S.C. § 1983; and (2) failure to allege complete diversity of citizenship for jurisdiction over plaintiff's state law claims. Plaintiff was

granted leave to file an amended complaint. Her amended complaint differs from the original only by its addition of the Connecticut Appellate Court and Clerks as parties for claimed improprieties in its judicial review of the foreclosure proceedings.

This amendment does not cure the defects in plaintiff's original complaint. Defendants' use of state judicial proceedings in foreclosure does not satisfy the requirement that defendants act "under color of state law." *See Dahlberg v. Becker*, 748 F.2d 85, 90-91 (2d Cir.1994). Plaintiff's allegations are of a misuse of laws by private parties. "[P]rivate misuse of [state law] does not describe conduct that can be attributed to the State" *Id.* (internal quotation marks omitted). Absent a legally sufficient claim under 42 U.S.C. § 1983, this is not a case "in which the citizenship of each plaintiff is diverse from the citizenship of each defendant," *Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 68, 117 S. Ct. 467, 136 L. Ed. 2d 437 (1996), thus affording an alternative basis for jurisdiction over the state law claims. Plaintiff therefore cannot cure the defects that resulted in the dismissal of her original complaint.

The complaint is dismissed without prejudice and with leave to file an amended complaint within thirty days. Plaintiff's motions for a temporary restraining order and preliminary injunction (Doc. 23) and for an extension of time (Doc. 24) are **denied** as moot.

SO ORDERED.

Dated at New Haven, Connecticut, February ___, 2002.

Peter C. Dorsey

United States District Judge